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DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

Docket No. OAG 147; AG Order No. 3532-2015

Authority of the Assistant Attorneys General to Compromise or Close Civil Claims

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the Department's regulations to increase the authority currently delegated to the Assistant Attorneys General to compromise or close civil claims and to make certain technical corrections.

DATES: Effective [Insert date of publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT: August E. Flentje, Acting Deputy Assistant Attorney General, Civil Division, Department of Justice, Washington, DC 20530; (202) 514-3309.

SUPPLEMENTARY INFORMATION: The current delegations of authority to compromise or close civil claims are contained in 28 CFR part 0, subpart Y, §§ 0.160-0.169. *See* 60 FR 15675 (Mar. 27, 1995). This final rule increases the monetary thresholds for the exercise of this authority by the Assistant Attorneys General and increases the redelegation authority to the United States Attorneys with respect to accepting offers of compromise for affirmative claims.

This final rule amends 28 CFR 0.160(a)(1) to increase the authority of the Assistant Attorneys General to compromise a civil claim asserted by the United States where the proposed settlement is within \$10 million or 15 percent of the original claim (up from the current threshold of \$2 million or 15 percent of the original claim). As provided in § 0.164, this change to § 0.160(a)(1) also means that the Assistant Attorneys General will have authority to close affirmative civil matters within the same new limits.

The final rule adds a new paragraph § 0.160(a)(2) to allow the Assistant Attorneys General to accept compromises in affirmative civil cases independent of the \$10 million cap in the limited circumstance where a qualified financial expert has reviewed the defendant's finances and has determined that the defendant likely does not have the ability to pay more than the proposed compromise offer. This would obviate the need to obtain higher level approval when claims are being compromised simply based on the defendant's financial condition rather than an analysis of the legal or factual merits of the claim. To clarify that new § 0.160(a)(2) applies to all cases within the authority of the Assistant Attorney General for the Environment and Natural Resources Division, including cases brought under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, the final rule also amends § 0.160(c)(2) by removing language similar to new § 0.160(a)(2).

In addition, the final rule also increases the authority for the Assistant Attorneys General to accept offers in compromise of claims asserted against the United States of up to \$4 million (up from the current threshold of \$2 million). *See* new § 0.160(a)(3) (currently § 0.160(a)(2)).

The final rule also amends § 0.168(d) to allow a delegation of authority to the United States Attorneys to compromise claims asserted by the United States for up to \$10 million (up from a claim of \$5 million where the settlement difference does not exceed \$1 million). Citations to subsections of § 0.160 in §§ 0.162 and 0.168 also have been revised in light of the changes to § 0.160.

Finally, this final rule would update the agency reference in § 0.169(b) defining the term “gross amount of the original claim” for purposes of any civil claim brought under section 592 of the Tariff Act of 1930, as amended.

Regulatory certifications

Administrative Procedure Act

This rule relates to a matter of agency management or personnel and is a rule of agency organization, procedure, and practice. As such, this rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. *See* 5 U.S.C. 553.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule, and by approving it, certifies that it will not have an impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis is not required for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter.

Executive Orders 12866 and 13563

This rule has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section I(b), Principles of Regulation, and with Executive Order 13563, “Improving Regulation and Regulatory Review.” This final rule is “limited to agency organization, management, or personnel matters” and thus is not a “rule” as described by Executive Order 12866, section 3(d)(3) and, therefore, is not a “regulation” or “rule” as defined by that Executive Order.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, “Civil Justice Reform.”

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, “Federalism,” the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a “rule” for purposes of the reporting requirement of 5 U.S.C. 801.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509, 510, and for the reasons set forth in the preamble, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-19.

2. In § 0.160, revise paragraphs (a), (c) introductory text, and (c)(2) to read as follows:

§ 0.160 Offers that may be accepted by Assistant Attorneys General.

(a) Subject to the limitations set forth in paragraph (d) of this section, Assistant Attorneys General are authorized, with respect to matters assigned to their respective divisions, to:

(1) Accept offers in compromise of claims asserted by the United States in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed \$10,000,000 or 15 percent of the original claim, whichever is greater;

(2) Accept offers in compromise of claims asserted by the United States in all cases in which a qualified financial expert has determined that the offer in compromise is likely the maximum that the offeror has the ability to pay;

(3) Accept offers in compromise of, or settle administratively, claims against the United States in all cases in which the principal amount of the proposed settlement does not exceed \$4,000,000; and

(4) Accept offers in compromise in all nonmonetary cases.

* * * * *

(c) Subject to the limitations set forth in paragraph (d) of this section, the Assistant Attorney General, Environment and Natural Resources Division, is further authorized to approve settlements under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, regardless of the amount of the proposed settlement, with:

* * * * *

(2) Parties whose responsibility can be equitably allocated and are paying at least the allocated amount.

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§ 0.162 [Amended]

3. Amend § 0.162 by removing the reference to “§ 0.160(c)(2)” and adding in its place “§ 0.160(d)(2)”.

4. Amend § 0.168:

a. In paragraph (a) by removing the reference to “§§ 0.160(a) and (b)” and adding in its place “§§ 0.160(a), (b), and (c)”; and

b. By revising paragraphs (d) introductory text and (d)(1).

The revisions read as follows:

§ 0.168 Redlegation by Assistant Attorneys General.

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(d) Subject to the limitations set forth in § 0.160(d) and paragraph (a) of this section, redelegations by the Assistant Attorneys General to United States Attorneys may include the authority to:

(1) Accept offers in compromise of claims asserted by the United States in all cases in which the gross amount of the original claim does not exceed \$10,000,000; and

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§ 0.169 [Amended]

5. Amend paragraph (b) of § 0.169 by removing the words “Customs Service’s” and adding in their place the words “United States Customs and Border Protection’s”.

Dated: May 21, 2015.

Loretta E. Lynch
Attorney General

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